

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
JACKSON DIVISION

EARL LEWIS ANDERSON

PLAINTIFF

VS.

CIVIL ACTION NO. 3:03CV903-WHB-JCS

WILLIE MARCH, ET AL.

DEFENDANTS

OPINION AND ORDER

A Final Judgment which dismissed this habeas corpus cause of action was filed with this Court on November 30, 2005. See, Final Judgment, docket entry no. 111. Under Rule 4(a)(1)(A) of the Federal Rules of Appellate Procedure, Petitioner had until December 30, 2005, to file his Notice of Appeal. The Notice of Appeal was untimely filed on January 20, 2006. See Notice of Appeal, docket entry no. 114. Because of Petitioner's untimely filing of the Notice of Appeal, the United States Court of Appeals for the Fifth Circuit remanded the case to this Court to ascertain whether "petitioner delivered the notice of appeal to prison officials for mailing on or before December 30, 2005...." See Remand Order from the Fifth Circuit, docket entry no. 120 on the docket of this Court.

If Petitioner delivered the Notice of Appeal to prison officials for mailing on or before December 30, 2005, then the Notice must be considered timely filed. Fed. R. App. P. 4(c)(1).

Through an Order filed under docket entry no. 121, this Court required the parties to submit proof of the date on which Petitioner delivered the Notice of Appeal to prison officials for mailing. The parties have now complied with that Order. Petitioner presented proof to the Court that the Notice of Appeal was delivered to prison officials for mailing on December 14, 2005, well within the allowable time frame set forth above. See Mississippi Department of Corrections Mail Transaction History, attached as an Exhibit to docket entry no. 123. Respondents do not dispute that the Notice of Appeal was delivered for mailing on December 14.

This Court THEREFORE FINDS that Petitioner's Notice of Appeal to the Fifth Circuit was timely filed. The Clerk of the Court is HEREBY ORDERED to return this case file to the Fifth Circuit for further prosecution of Petitioner's claims.

SO ORDERED this the 27th day of July, 2006.

s/ William H. Barbour, Jr.  
UNITED STATES DISTRICT JUDGE

tct